IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

Bail Appl..No. 6536 of 2007()

CRIME NO.380/07 OF PUDUKKAD POLICE STATION

PETITIONER/ACCUSD

BABU, AGED 51, S/O.MATHU,
PADAMADAN HOUSE, PUDUKKAD.

BY ADV. SRI.T.M.CHANDRAN
SRI.S.SUJITH

RESPONDENTS: STATE AND COMPLAINANT

1. **STATE OF KERALA, REPRESENTED BY**
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. **SUB INSPECTOR OF POLICE,**
   PUDUKKAD THRISSUR.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6536 of 2007

Dated this the 30th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations for offences punishable, inter alia, under Sections 420 and 468 I.P.C. Crime has been registered on the basis of a private complaint filed before the Magistrate and referred to the police under Section 156(3) Cr.P.C.

2. The crux of the allegations is that the mother of the defacto complainant had executed a Will bequeathing an item of property to the defacto complainant and her sister. That Will was executed on 22.07.03. The mother expired on 24.12.04. After the death of the mother, all the other legal heirs of the mother - other than the legatees under the Will have executed a document surrendering their fractional right in favour of the petitioner. The petitioner had taken that assignment in his name. It is contended that all the executants of such surrender deed as well as the petitioner herein were aware of the Will executed by the mother. It is contended that the execution of the document is a fraudulent exercise by the other legal heirs in collusion with the petitioner. The defacto complainant is the sister of the petitioner herein.

3. The learned counsel for the petitioner submits that the petitioner and the other legal heirs are not aware of and do not accept that the deceased mother had executed any such Will. Essentially and basically the dispute is one of civil nature between the defacto complainant/legatees on the one side and the other legal heirs on the other. In any view of the matter, the execution of a document by the other legal heirs and acceptance of such assignment by the petitioner cannot be held to result in any culpable criminal offence. The petitioner may be granted anticipatory bail. The transparent purpose is to vex and harass the petitioner and thus compel him to yield to unreasonable terms.

4. The learned Public Prosecutor does not oppose the application and I am satisfied in the facts and circumstances, to which I have already made brief reference that this is a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can and ought to be invoked in favour of the petitioner.

5. In the result, the Bail Application is, allowed. The following directions are issued under Section 438 Cr.P.C.

i) The petitioner shall appear before the learned Magistrate at 11 a.m on 06.11.2007. He shall be enlarged on regular bail on his executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only)

with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m and 3 p.m on 07.11.2007 and thereafter as and when directed by the Investigating Officer in writing to do so;

iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if those directions were not issued at all;

iv) If the petitioner were arrested prior to his surrender on 06.11.07 as directed in clause (1) above, he shall be released from custody on his executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) without any sureties undertaking to appear before the learned Magistrate on 06.11.07.

(R.BASANT, JUDGE)

rtr/-